in the High Court. I read sub-section (2) of section 138 of the Criminal Procedure Code.

"(2) In any trial before a District Court in which it appears at any stage of the proceedings that from any cause the case is one which the District Court is not competent to try or one which in the opinion of such court ought to be tried by the High Court, or if before or during such trial application is made by the Public Prosecutor, the court shall stay proceedings and shall order the accused to be brought before a Police Court with a view to the committal of the accused for trial by the High Court and shall record such order on the proceedings."

The prosecuting officer, an A.S.P., has been attached to the court as ASP. Court for over ten years and I am a little shocked that he has failed to direct the attention of the learned Deputy Public Prosecutor or the learned President, Sessions Court, that the case is one which he is not competent to try.

In spite of two previous cases, as I said, mistakes and errors and oversight continue and I hope that what I am now saying would bring about more vigilance by officers concerned with the administration of justice, namely, the police, the Legal Department, the court and counsel who appear therein which would have saved the time wasted on a trial which is an obvious nullity.

I set aside, in revision, the order of acquittal on the ground that the trial is a nullity and that the learned president is without jurisdiction in the matter. I direct that a warrant of arrest be issued for the apprehension of the respondent, who seems to have conveniently disappeared after his acquittal by the learned president, so that he can be brought back to be charged under section 326 of the Penal Code and a preliminary enquiry be held with a view to committal for trial in the High Court.

Acquittal set aside.

MAHADEVAN v. ANANDARAJAN & ORS.

[O.C.J. (Abdul Hamid J.) September 5, 1969]

[Seremban — Civil Suit No. 101 of 1968]

Administrative Law — Expulsion of student from school for misconduct — Inquiry — Adequate notice not given — Failure to observe rules of natural justice — Fair opportunity to be heard.

Education — School — Student — Expulsion for misconduct — Natural justice — Fair opportunity of being heard — Education (School Discipline) Regulations, 1959, regs. 4, 8 & 10.

In this case the plaintiff applied for (i) a declaration that the order of expulsion of the plaintiff as a pupil in a school in Seremban made by the first defendant and the decision of the Board of Governors of the school confirming the expulsion were null and void and of no effect; (ii) an order that he be reinstated as a pupil of the school. He also claimed for damages and costs. The plaintiff had been dismissed by the first defendant because of alleged misconduct on several occasions. Regulation 8 of the Education (School Discipline) Regulations, 1959, provides that whenever "it appears to the satisfaction of the head teacher of any school — (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled ..... he may by order expel him from such school." It appeared that the first defendant in this case had called the plaintiff to his office to investigate into the allegations against him and had warned him that probably he would expel him or take some action against him.

Held: (1) in the circumstances of the present case a mere warning by the first defendant that the plaintiff might probably be expelled fell short of the requirements of natural justice;

(2) the first defendant had omitted to provide adequate notice to the plaintiff to enable him to truly appreciate the exact nature and purpose of the interview and such omission had the effect of depriving the plaintiff of a fair opportunity to be heard;

(3) the plaintiff was therefore entitled to a declaration that the order of expulsion was null and void and of no effect and to an order that he be reinstated as a pupil of the school;

(4) in this case the plaintiff had not succeeded to prove the defendants' liability in damages.

Cases referred to:—

(1) *Ramesh Chandra Sahu* v. *N. Padhy* A.I.R. 1959 Orissa 196.

(2) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631.

(3) *Hoggard* v. *Worsbrough Urban District Council* [1962] 1 All E.R. 468.

(4) *R.* v. *Senate of University of Aston* [1969] 2 All E.R. 964.

CIVIL SUIT

Dato' S.P. Seenivasagam (*J. Nadchatiram* with him) for the plaintiff.

Abdullah bin Ngah (Legal Adviser) for the defendants.

Cur. Adv. Vult.

Abdul Hamid J.: The plaintiff's claim is:—

(a) for a declaration that the order of expulsion of the plaintiff as a pupil from the King George V School, Seremban, made by the 1st defendant with effect from the 4th day of May, 1968, and the decision of the Board of Governors made on the 1st day of June, 1968, is null and void and of no effect;

(b) for an order that the plaintiff be reinstated as a pupil of the King George V School, Seremban, forthwith;

(c) damages and costs.

The 1st defendant is alleged to have unlawfully, maliciously and without any valid reasons expelled the plaintiff from the school and that the action taken by the 1st defendant was in violation of the rules of natural justice.

The facts leading to the expulsion of the plaintiff are conflicting. The following is a brief summary. The plaintiff in his evidence

stated that on 6th May, 1968, the 1st defendant announced in the school hall that a pupil was to be expelled. Later that day he was informed by the 1st defendant in his office that he had been expelled and was told to go home. A leaving certificate was subsequently sent to his father. No indication, he said, was given either to him or to his father that he was to be expelled, and neither was he asked to explain before the order of expulsion was issued. His father appealed against the 1st defendant's decision to the Board of Governors. The board considered the appeal and confirmed the 1st defendant's decision.

The 1st defendant stated in his evidence that he decided to expel the plaintiff after the talentime show which was held on the 1st day of April, 1968. He received a report of the plaintiff's misconduct at the talentime show from the teacher in charge of the show. Reports on the behaviour of the plaintiff at that show were also made by the head prefect and the chairman of the Interact Club. The report contained allegations that the plaintiff flicked matches and indulged in hooliganism with his group. He called the plaintiff with two other boys to his office on 2nd April, 1968, questioned them on their behaviour and also told them that if they were to carry on behaving like thugs, they would soon find themselves stabbed. He also questioned the plaintiff alone on that day. He informed the plaintiff of his misconduct on other occasions. The plaintiff denied the accusations. He however admitted to some of the incidents that happened, for example, occupying a $3 seat after paying for a $2 seat and leaving the hall a few times during the show. He admitted laughing but denied shouting filthy words and flicking matches. The 1st defendant added that during the course of the interview, the plaintiff asserted that he (the 1st defendant) could be charged for defamation of character. The plaintiff, he said, displayed blatant defiance of authority. He then informed the plaintiff of his misbehaviour towards the Prefects' Board. On another occasion the plaintiff brought a letter from his father saying that he was ill and yet he was found later that day playing badminton. The plaintiff admitted when confronted that he was running away from school activities but argued that the pain did not hurt him if he played badminton. The 1st defendant also told the court of certain remarks made by the plaintiff's teachers in the plaintiff's exercise book to the effect that the plaintiff was far from satisfactory and that he was a bad influence in the class. The 1st defendant maintained that he took all these into consideration before making his decision. He also caused further investigation into the incidents of the plaintiff's misconduct before he formed the opinion that the tone of the school was being affected by the plaintiff's behaviour. He emphasized that the morale, discipline and attitude of students generally, and at the same time the morale and confidence of the teachers were being affected.

The 1st defendant said that he decided to expel the plaintiff just before his departure to Johore Bharu to attend a course some time on the 14th of April, 1968.

In cross-examination the 1st defendant said that he had opportunity to judge the plaintiff's character for three months. Answering the question put by the plaintiff's counsel as to the purpose of calling the plaintiff and two other boys to his office on 2nd April, 1968, he said that it was to investigate the validity of the report and to decide the course of action to take. On being questioned further he agreed with the plaintiff's counsel that the purpose of calling the plaintiff and two other boys was to investigate the incident at the talentime show. However, he said that in so far as the plaintiff was concerned, he informed him of the history of his misbehaviour. He disagreed with the plaintiff's counsel's suggestion that most of the reports were received after 2nd April, 1968, though he admitted that some of the reports were made between 2nd April and 10th April, 1968. The 1st defendant also said that he warned the plaintiff that probably he would expel him or take some action or something to that effect.

The plaintiff in cross-examination admitted that the 1st defendant called him and two other boys to his office. He alleged that the 1st defendant scolded them about the incident at the talentime show and shouted at them at the top of his voice. As a result, he broke down and started crying. He asked for permission to leave the school as he was not feeling well but was refused. The 1st defendant called him again to the office, this time alone, and asked him to swear on the life of his (plaintiff's) mother that he did not misbehave himself at the talentime show and he swore. He again asked for permission to go home but was refused. The plaintiff reported this incident with the head teacher to the Chief Education Officer but no action was taken. He later lodged a police report as a result of which a summons was issued to the 1st defendant for assault. The case was however withdrawn because, according to the plaintiff, he wanted to establish good relationship with his teachers and head teacher. The plaintiff denied most of the allegations of misconduct. He however admitted, for example, making funny faces at the head prefect, but added that they were not rude faces.

I shall now examine the provisions of law under which the 1st defendant acted when he

decided to expel the plaintiff. Under regulation 4 of the Education (School Discipline) Regulations 1959 (L.N. 61/1959), the head teacher is responsible to the Board of Governors for the discipline of the school and has authority over the pupils. Regulation 8 of the said regulations provides that:—

"Whenever it appears to the satisfaction of the head teacher of any school — (a) to be necessary or desirable for the purpose of maintaining discipline or order in any school that any pupil should be suspended or expelled ..... he may by order expel him from such school."

Under regulation 10 a pupil or his parent may appeal against a decision of the head teacher under regulation 8.

Regulation 8 seems to me to require that the head teacher must first be satisfied that the plaintiff's expulsion is necessary or desirable for the purpose of maintaining discipline or order in the school before he issued the order. It also implies that the head teacher is required to make a decision before issuing the order. Before taking such a decision there must be some process whereby the head teacher can satisfy himself of the pupil's misconduct justifying expulsion. I shall deal with this later in my judgment.

Before proceeding further, the court proposes to consider whether such decision may judicially be reviewed. *de Smith* in his book Judicial Review of Administrative Action, 1st Edition, at pages 61/62 said:—

"In considering the scope of judicial review, a further broad distinction must be drawn between ministerial, legislative, and executive or administrative powers, on the one hand, and judicial powers, on the other. The validity of the exercise of ministerial, administrative and legislative powers affecting the legal interests of individuals is always open to challenge in the courts, unless judicial review has been excluded, directly or indirectly, by the relevant legislation. If the exercise of the power is predicated on findings of law or fact, the correctness of those findings may be impugned directly or in any appropriate form of collateral proceedings — e.g., by resisting an action or prosecution for enforcement of the order, by bringing an action for a declaration that the order is null and void, or by suing the actor for a civil wrong."

In the instant case, the function of the head teacher cannot, in my opinion, be regarded as purely administrative or judicial. Apparently, there are no clear authorities to indicate when an administrative body can be said to be acting judicially or exercising a quasi-judicial function. The reflection gathered from authoritative pronouncements delivered by English courts is that one must rely mainly on inferences drawn from the manner in which the courts have acted in particular cases.

In *Ramesh Chandra Sahu v. N. Padhy, Principal, Khallikote College, Berhampur,*[1] R.L. Narasimham C.J., in his judgment on a petition by an ex-student of the college challenging the validity of an order passed by the principal of that college expelling the petitioner, said at page 203 (para. 25):—

"It is indeed very difficult to decide whether a particular order is quasi-judicial or administrative. Several tests have been laid down and these have been reiterated in a very recent decision of the Supreme Court reported in *Radesham Khare v. State of Madhya Pradesh*, [1959] S.C.J. 6; A.I.R. 1959 S.C. 107."

His Lordship referred to an undertaking contained in article 107 of the Education Code which at the time of admission every student in the college, if he is a major, or his parents, if he is a minor, is required to give. It reads:-

"I undertake to see that my son/daughter/ward abides by the rules of the college and the hostel attached to it. I also undertake to withdraw him/her from the college and/or hostel should the principal decide that such withdrawal is necessary in the interest of the institution."

His Lordship held "that the use of the word 'decide' in article 107 of the Education Code was very significant. There must be first a decision by the principal that the withdrawal of the boy from the college was necessary and it was only after coming to such a decision that he should take further steps. A 'decision' necessarily involves hearing all parties concerned. The language of article 107 of the Orissa Education Code supported the view that it was a quasi-judicial order."

In the instant case, although under regulation 8 of the Education (School Discipline) Regulations 1959, the word "decide" is not used, the effect of the language used seems to me to support the view that the order of the head teacher is a quasi-judicial order. The element of "decision" which I think is a necessary ingredient when exercising a judicial function may be implied from the language used. Furthermore, the fact that the regulations also make provision for an appeal against the "decision" of the head teacher (regulation 10) tends to strengthen my view that it is a quasi-judicial order.

In *University of Ceylon v. Fernando*[2] the judgment of the Privy Council was pronounced on the basis that the decision of the Vice-Chancellor of the University of Ceylon under clause 8 of the General Act of the University of Ceylon, No. 1, Chapter VIII, Part I, was quasi-judicial. Clause 8 prescribes:—

"Where the Vice-Chancellor is satisfied that any candidate for an examination has acquired knowledge of the nature or substance of any question or the content of any paper before the date and time of the examination, or has attempted or conspired to obtain such knowledge, the Vice-Chancellor may suspend the candidate from the examination or remove his name from any pass list, and shall report the matter to the Board of Residence and Discipline for such further action as the board may decide to take."

The principle in *Fernando's* case was applied in *Hoggard v. Worsbrough Urban District Council*[3] and at page 471 Winn J. said:—

"In my view, *University of Ceylon v. Fernando* provides a very helpful glossary and collection of references to the cases in which the court has defined the duty resting on persons whose decision is a quasi-judicial decision."

In paragraph 3 of the statement of claim the plaintiff alleges that the 1st defendant unlawfully, maliciously and without any valid reason expelled the plaintiff from the said school, and in paragraph 9 a somewhat similar allegation is made. There appears to be no significant distinction between these two allegations. In the light of this allegation, it is not perhaps inappropriate at this juncture to examine the facts to discover whether the head teacher had valid reasons to act under regulation 8.

It is clear from the evidence of the 1st defendant that he decided to expel the plaintiff after the talentime show on 2nd April, 1968, being satisfied that it was necessary to expel the plaintiff for the purpose of maintaining discipline in the school.

I am satisfied that on 2nd April, 1968, the 1st defendant had sufficient evidence relating to instances of the plaintiff's misconduct in his possession to justify him to commence proceedings to expel the plaintiff. I have carefully considered the evidence given by the plaintiff and the head teacher and I form the impression that the plaintiff was not telling the truth to this court when he denied the allegations. On the other hand, I accept the evidence given by the 1st defendant. I have not the slightest doubt that the allegations of the plaintiff's misconduct are well-founded. It is apparent from the evidence that the plaintiff is an intelligent pupil but it is most unfortunate that his conduct has not matched his mental qualities. The reports received by the 1st defendant irresistibly show that the plaintiff was not only irresponsible, arrogant, spoilt and conceited, but also inconsiderate and had no respect for authority.

The 1st defendant is invested with the legal powers to expel and, in my opinion, except for the procedure adopted, he exercised that lawful power honestly and in good faith. It is alleged by the plaintiff that the 1st defendant acted maliciously when purporting to expel the plaintiff. In this connection, I accept the evidence of the 1st defendant and also the statement in his affidavit (paragraph 6, page 17 of Ex. P1) where he said "I deny that I was actuated by malice in expelling the plaintiff. The decision to expel him was taken by me after consulting my senior teachers and after due consideration of the plaintiff's conduct and character in school. To consider this question on disciplinary action against the plaintiff, reports from form teachers and the Prefects' Board were first obtained and duly considered". It is suggested by the plaintiff that the reason for the expulsion may be attributed to the fact that the plaintiff had lodged a report against him for assault. I do not find any substance in this allegation; at any rate, I accept without reservation the statement in the affidavit sworn by the 1st defendant appearing on page 20 of Ex. P1, paragraph 10, which says that:—

"I say that this report by the plaintiff had not influenced my decision to expel the plaintiff. I had already decided to expel the plaintiff but was only waiting to discuss this with my senior teachers which I did in early April 1968. The latest incident took place on the 2nd of April, 1968. The report by the plaintiff was not made to the police till the 10th April, 1968 and a copy thereof was sent to me a few days later."

It is needless for me to repeat that it is abundantly clear from the evidence that the 1st defendant had good reasons for wanting to expel the plaintiff. In these circumstances, I find that the plaintiff's allegations that the 1st defendant had acted unlawfully, maliciously, capriciously and without valid reasons are without substance and ill-founded. To my mind, there is no shadow of a doubt as to the honesty and *bona fide* of the head teacher.

The question before the court is whether the plaintiff, before the expulsion order was issued, acquired adequate notice of his impending expulsion and, if he did, whether an adequate opportunity to explain was accorded him. In short, whether the 1st defendant before arriving at a decision to expel the plaintiff did apply some form of procedure in compliance with the rules of natural justice.

The learned Legal Adviser contended that the head teacher was satisfied and as such he could expel and there need not be any specific charge levelled against the plaintiff. He added that the power to expel vested with the head teacher is discretionary. I am unable to accept this contention. As I said earlier, the process of satisfying himself would require him (the 1st defendant) to enquire into the instances of the plaintiff's misconduct and hearing the explanation, if any, in rebuttal. I do not disagree that a certain amount of discretion is vested in the 1st defendant in the exercise of his function, nevertheless, as in *Fernando's* case, his function is quasi-judicial and he is therefore required to act quasi-judicially. Furthermore, it cannot be implied from regulation 8 that the power to expel was solely in the discretion of the 1st defendant (see *R. v. Senate of the University of Aston, Ex. parte. Roffey and Anor.*[4]). The learned Legal Adviser also submitted that the head teacher had adequately warned the plaintiff that he might be expelled

on 2nd April, 1968. He argued that this was sufficient compliance with the rules of natural justice as the head teacher was not required to apply the rules strictly. It is a question of fact for the court to consider whether in the circumstances a warning of the nature given by the head teacher was sufficient compliance with the rules of natural justice.

Dato' S.P. Seenivasagam, counsel for the plaintiff, alleges that there was a violation of the rules of natural justice. The interview on 2nd April, 1968, he said, was primarily for the purpose of enquiring into the incident at the talentime show. The plaintiff was not informed that he was to be expelled and he was not made to realise that he was in a position to be expelled. He submitted that it was necessary to call upon the plaintiff to show cause why he should not be expelled and failure to do this is a violation of the rules of natural justice.

The 1st defendant himself gave evidence that he did inform the plaintiff that he would probably expel him (plaintiff) or take some action or something to that effect. The 1st defendant also said in the affidavit on page 18 of Ex. P1 that he called the plaintiff up for questioning as to his bad behaviour at the talentime show with two other boys. The 1st defendant contended that the plaintiff had reasons to believe that he (the 1st defendant) may expel him. I accept this. Nevertheless, it is probable that the plaintiff failed to realise that the 1st defendant was, in fact, proposing to take such drastic action. In any event, it is, I think abundantly clear that at no time did the 1st defendant give any definite intimation or warning to the plaintiff during the interview on 2nd April, 1968, that he was going to be expelled unless he could give an explanation. He could not in the circumstances have done so since at that time no definite action was contemplated by the 1st defendant. The 1st defendant admitted in the affidavit on page 18 of Ex. P1 that he only decided the expulsion after several discussions and receiving verbal reports from the form teacher. It is therefore evident that while the intention to expel the plaintiff may be forming in the 1st defendant's mind, he did not however on 2nd April, 1968, come to any definite decision — not until 10th April, 1968. The plaintiff could not therefore have known or have had reasons to believe that he was appearing before a disciplinary proceeding for his expulsion. At best, it can perhaps be inferred that he knew or had good reasons to believe that some form of punishment may be imposed.

The regulations clearly did not provide any specific procedure to be followed. Nevertheless, in exercising a quasi-judicial function it is essential that the 1st defendant should give an equitable decision. The plaintiff is at least entitled, I think, to an opportunity of being heard. The question in the present case is whether the 1st defendant, by proceeding in the manner that he did, complied with the rules of natural justice.

The fact that no specific breach is prescribed under regulation 8 does not necessarily mean that the head teacher is not obliged to inquire into the state of affairs relating to the plaintiff's conduct before satisfying himself that it was necessary or desirable to expel the plaintiff for purposes of maintaining discipline or order in the school. In that respect, I find no significant distinction between the effect of the provision of clause 8 of the General Act in *Fernando's* case and regulation 8 of the Education (School Discipline) Regulations, 1959 in this case. In exercising a quasi-judicial function the 1st defendant is therefore required to act quasi-judicially.

It is true to say that the rules of natural justice need not in certain circumstances be applied strictly, but this does not mean that the inquiry may be conducted with complete disregard to the rights accorded by the principles of natural justice. What, therefore, are authoritative pronouncements on the principles of law governing *audi alterem partem* rule when exercising a function in this kind of case? In *Ramesh Chandra's* case, *supra*, Narasimham C.J. after reviewing English, American and Indian authorties, said at page 203:—

> "Thus a review of the Indian decisions shows a divergence of view as to whether an order of expulsion or rustication passed by the head of an educational institution against an offending pupil would be a quasi-judicial act or purely administrative act. The majority view which is based on the judgment of Bose J. in A.I.R. 1952 Cal. 594 seems to be that it is a quasi-judicial act. But whether it is a quasi-judicial act or administrative act, the majority view of the High Courts (even that of Allahabad High Court as reflected in the decision of Aggarwalla J.) seems to be that the student concerned should get a reasonable opportunity of showing cause against the proposed punishment.
>
> The English and American decisions cited above also support the view that even in respect of such administrative acts the rules of natural justice embodied in the maxim *audi alterem partem* should be complied with."

As I said earlier, the element of "decision" may be implied from the language of regulation 8, and as was said by Narasimham C.J. in *Ramesh Chandra's* case, a "decision" necessarily involves hearing all parties concerned.

I also referred earlier to *Fernando's* case. In this case as in *Fernando's* case no special form of procedure is provided for the head teacher to follow in the process of satisfying himself before deciding to expel the plaintiff. In *Fernando's* case, Lord Jenkins said at page 638:—

"The clause is silent as to the procedure to be followed by the Vice-Chancellor in satisfying himself of the truth or falsity of a given allegation. If the clause contained any special directions in regard to the steps to be taken by the Vice-Chancellor in the process of satisfying himself he would, of course, be bound to follow those directions. But as no special form of procedure is prescribed, it is for him to determine the procedure to be followed as he thinks best, but, to adapt to the present case the language of the judgment of this Board in *De Verteuil v. Knaggs* ([1918] A.C. at p. 560), subject to the obvious implication that some form of inquiry must be made, such as will enable him fairly to determine whether he should hold himself satisfied that the charge in question has been made out. As was said by Lord Shaw of Dunfermline in *Local Government Board v. Arlidge* ([1915] A.C. at p. 138), of the authority there concerned it

> '.... must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means.'"

And at page 637, his Lordship speaking on the rights accorded by the principles of natural justice referred to some of the principles laid down in previous cases, and at pages 637/8 said:—

"These rights have been defined in varying language in a large number of cases covering a wide field. Their Lordships do not propose to review these authorities at length, but would observe that the question whether the requirements of natural justice have been met by the procedure adopted in any given case must depend to a great extent on the facts and circumstances of the case in point. As Tucker, L.J., said in *Russell v. Duke of Norfolk* ([1949] 1 All. E.R. 109 at p. 118):

> 'There are, in my my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.'

In the earlier case of *General Medical Council v. Spackman* ([1943] 2 All E.R. 337 at p. 341) Lord Atkin expressed a similar view in these words:

> 'Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies; but I cannot think that the procedure which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn, L.C., in *Board of Education v. Rice* ([1911] A.C. 179 at p. 182) afford a complete guide to the General Medical Council in the exercise of their duties.'

With these reservations as to the utility of general definitions in this branch of the law, it appears to their Lordships that Lord Loreburn's much quoted statement in *Board of Education v. Rice* still affords as good a general definition as any of the nature of and limits on the requirements of natural justice in this kind of case. Its effect is conveniently stated in this passage from the speech of Viscount Haldane, L.C., in *Local Government Board v. Arlidge* ([1915] A.C. 120 at p. 132), where he cites it with approval in the following words:

> 'I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education v. Rice* he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The board had no power to administer an oath, and need not examine witnesses. It could, he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view.'

From the many other citations which might be made, their Lordships would select the following succinct statement from the judgment of this Board in *De Verteuil v. Knaggs* ([1918] A.C. 557 at p. 560):

> 'Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice.'

The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Harman, J., in *Byrne v. Kinematograph Renters Society, Ltd.* ([1958] 2 All E.R. 579 at p. 599) of which their Lordships would express their approval. The learned judge said this:

> 'What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more.'"

The principle laid down in *Fernando's* case was applied two years later in *Hoggard v. Worsbrough Urban District Council, supra,* where Winn J. at page 471 said:—

"Where two parties are in dispute, and the obligation of some person or body is to decide equitably between the competing claims, each claim must receive consideration and each claimant must, as a rule, be invited — not merely left so that if he chooses to take the initiative he can do it — to put forward the material in the form of documents or accounts which he desires to have considered, and an opportunity must be afforded to him of making comment on material of the same character which has been put forward by rival claimants and which the council are proposing to consider."

In the light of the principles laid down in the cases cited above, I am satisfied that in the circumstances of the present case a mere warning by the 1st defendant that the plaintiff may probably be expelled fell short of the requirements of natural justice. The 1st defendant, in my opinion, omitted to provide adequate notice to the plaintiff to enable him to truly appreciate the exact nature and purpose of the proceedings when he interviewed the plaintiff at his office on 2nd April, 1968. In my view, such omission had the necessary effect of depriving the plaintiff of a fair opportunity of being heard. Furthermore, such omission, to my mind, goes to the root of

the very basis of the requirements of natural justice and is serious enough to warrant a finding by this court that it is sufficient to invalidate the decision of the head teacher. For these reasons, I hold that the claim must succeed.

Having thus decided, I do not propose to consider the effect of the proceedings before, and the decision of, the Board of Governors.

As regards the claim for damages, I am not satisfied that the plaintiff has succeeded in proving the defendants' liability. The 1st defendant's omission to provide adequate notice in the circumstances mentioned above does not legally entitle the plaintiff to claim damages unless it is shown that the 1st defendant acted dishonestly, maliciously or in bad faith. I have, however, found that in the circumstances of this case the 1st defendant acted honestly and *bona fide*.

I therefore enter judgment for the plaintiff and declare that the order of expulsion of the plaintiff as a pupil from the King George V School, Seremban, made by the 1st defendant with effect from the 4th day of May, 1968, is null and void and is of no effect. I also order that the plaintiff be reinstated as a pupil of the King George V School, Seremban, and costs.

Order accordingly.

Solicitors: *Nadchatiram Bros.*

WONG KHANG JONG v. ALI & ANOR.

[F.C. (Ong Hock Thye C.J. (Malaya), Gill & Ali F.JJ.) September 10, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 12 of 1969]

Negligence — Personal injury — Damages — Quantum.

Damages — Leg — 2" shortening.

Damages — Award — Error in principle — Levelling factor.

In this case the appellant had been injured in a road accident caused by the negligence of the first respondent. He was formerly a cook and at the time of the accident was 52 years old. As a result of the accident he sustained a fracture of the right femur resulting in a 2" shortening of the leg, limitation of flexion of the knee, limited rotation and extension of hip movement and some wasting of the muscle of the right calf and leg. He was awarded $5,500 for pain and suffering and $2,000 for loss of future earnings. By way of contrast the learned trial judge in a subsequent case in the same month awarded a married woman aged 69 at the date of the accident $7,500 general damages for fracture of the right femur causing a 2½" shortening of the leg, limitation of flexion of the right knee joint and wasting of leg muscles.

Held, allowing the appeal: there was an error of principle in awarding identical awards to two persons where expectation of life must be different by some 10 years, on the ground that the levelling factor was the expectation of the appellant in this case of working life as a cook and therefore the award of damages must be increased from $7,500 to $10,000.

Cases referred to:—

(1) *Sah Imm* v. *Utam Singh Omnibus Co. Ltd.* (unreported).

(2) *Watson* v. *Powles* [1967] 3 All E.R. 721, 723.

(3) *Jag Singh* v. *Toong Fong Omnibus Co. Ltd.* [1964] M.L.J. 463, 465.

(4) *Fletcher* v. *Autocar & Transporters Ltd.* [1968] 1 All E.R. 726, 736.

FEDERAL COURT

D.H. Murphy (*David S.H. Tay* with him) for the appellant.

M. Edgar for the respondents.

Cur. Adv. Vult.

Ong Hock Thye C.J. (Malaya): On October 25, 1965 the appellant was riding a motor-cycle from Port Dickson to Kuala Lumpur when he collided with the respondents' omnibus, the driver of which was held negligent and solely responsible. The judge awarded the appellant $4,380.40 and $7,500 respectively for special and general damages. This appeal is on the ground that the quantum of general damages is too low.

The appellant formerly used to work in canteens and coffee-shops. Later he had his own coffee-shop, but went out of business to work as cook to a European family who also employed his wife. He was earning $165 per month when he was injured. He was then 52 years old. When the action came on for trial he was 56.

The injury he sustained was a comminuted fracture of the upper one-third of the right femur, resulting in a permanent limp, due to a 2-inch shortening of the leg, 30-degree flexion limitation of the knee, limited rotation and extension of hip movement and some wasting of the muscles of the right calf and leg. He was admitted into hospital for 1½ months, after which he continued treatment as an outpatient till readmission on November 14, 1966 into hospital, from which he was finally discharged on January 21, 1967. He had to use crutches in 1967, but could dispense with them since. He can now stand and walk for half an hour, beyond which he would feel pain. As to his capacity to work the State Surgeon testified that his disabilities would not interfere with or affect his job as a cook.

Regarding the question of damages, it may be observed that the appellant's pre-trial loss of earnings had been included in the award for special damages, at the rate of $165 per month for the 15 months between his first admission into hospital and his final discharge on January 21, 1967, amounting to $2,475. Thereafter he